

# FORMAL COMPLAINT



0000086712

## ORIGINAL

### BEFORE THE ARIZONA CORPORATION COMMISSION

#### COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

Arizona Corporation Commission

**DOCKETED**

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ARIZONA CORPORATION COMMISSION  
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IN THE MATTER OF THE FORMAL  
COMPLAINT OF SULPHUR SPRINGS  
VALLEY ELECTRIC COOPERATIVE,  
INC. AGAINST ARIZONA ELECTRIC  
POWER COOPERATIVE, INC.

**DOCKET NO.**

E-01575A-08-0358

E-01773A-08-0358

**FORMAL COMPLAINT**

Pursuant to the provisions of A.R.S. §§ 40-203, 40-246, 40-247, 40-248, 40-249, and A.A.C. R14-3-106.L, Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC"), through counsel undersigned, hereby files its formal complaint ("Complaint") against Arizona Electric Power Cooperative, Inc. ("AEPCO") and requests that the Arizona Corporation Commission ("Commission") issue an order granting SSVEC the relief requested herein.

In support of its Complaint, SSVEC alleges and asserts as follows:

#### GENERAL ALLEGATIONS

1. SSVEC is an Arizona member-owned non-profit rural electric distribution cooperative whose business address is 350 North Haskell, Willcox, Arizona 85643. SSVEC provides electric service to most of Cochise County and portions of Santa Cruz, Pima, and Graham counties.

2. AEPCO is an Arizona non-profit electric generation cooperative whose business address is P.O. Box 670, Benson, Arizona 85602. AEPCO supplies all, or

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1 most of, the power and energy needs of its five Arizona Class A member distribution  
2 cooperatives.

3 3. SSVEC and AEPCO are public service corporations, as that term is  
4 defined in Article 15, Section 2, of the Arizona Constitution, and, as such, have been  
5 granted Certificates of Convenience and Necessity by the Commission to provide  
6 electric services to their respective members.

7 4. AEPCO's Arizona members include SSVEC, Mohave Electric  
8 Cooperative, Inc. ("Mohave"), Duncan Valley Electric Cooperative, Inc. ("Duncan"),  
9 Graham Electric Cooperative, Inc. ("Graham"), and Trico Electric Cooperative, Inc.  
10 ("Trico").

11 5. AEPCO's Arizona members are either All Requirements Members  
12 ("ARM") or Partial Requirements Members ("PRM") of AEPCO. An ARM has a  
13 contract with AEPCO which requires it to buy, and AEPCO to plan for and to furnish,  
14 all of the ARMs' present and future electric power requirements. In contrast, a PRM  
15 has a contract with AEPCO to furnish only a portion of its electric power requirements.  
16 A PRM is obligated to plan for and secure the balance of its power needs from other  
17 sources. Duncan, Graham, and Trico are ARMs. Mohave became a PRM in 2001 as  
18 part of AEPCO's restructuring. On January 1, 2008, SSVEC converted its membership  
19 in AEPCO from an ARM to a PRM, pursuant to Commission Decision No. 70105  
20 (December 21, 2007). However, AEPCO did not start charging SSVEC as a PRM  
21 under its Commission-approved fuel and purchased power cost adjustment ("FPPCA")  
22 until April 1, 2008.<sup>1</sup>

23 6. On August 17, 2005, the Commission issued Decision No. 68071 in  
24 Docket No. E-01773A-04-0528, *In the Matter of the Application of Arizona Electric*  
25 *Cooperative, Inc., for a Rate Increase*, and Docket No. E-04100A-04-0527, *In the*

26 <sup>1</sup> See, Decision No. 70105, Finding of Fact 23 at pages 4 and 5.

1 *Matter of the Application of Southwest Transmission Cooperative, Inc., for a Rate*  
2 *Increase ("Rate Decision").*<sup>2</sup>

3 7. As part of the Rate Decision, the Commission authorized AEPCO to  
4 establish the FPPCA to allow semi-annual adjustments of rates in April and October for  
5 AEPCO to either recover from, or refund to its members, changes in fuel and purchased  
6 power expenses as compared to AEPCO's 2003 test year cost levels.

7 8. The Rate Decision held that a separate base cost of power be established  
8 for the PRM and ARM classes and set the base at \$0.01603 per kWh and \$0.01687 per  
9 kWh, respectively.<sup>3</sup> This was because Mohave, the only PRM at the time, did not  
10 participate in the Panda Gila River ("PGR") purchase power agreement that  
11 subsequently expired in 2007. Accordingly, those costs, for which Mohave derived no  
12 benefit as a PRM, were excluded from the base cost of power calculation for the PRM  
13 class, which is why the base rate was lower for the PRM class.

14 9. In order to calculate the FPPCA, AEPCO must first allocate fuel and  
15 purchased power costs to each member class (ARM and PRM), and then divide that  
16 amount for the requisite period by the kWh energy sales to the same class during the  
17 period.

18 10. The Rate Decision established separate rate classes for ARMs and PRMs  
19 for the purpose of excluding fuel and purchased power costs completely attributable to  
20 the ARM class from the PRM base rate so that PRMs and their ratepayers would not be  
21 allocated and pay costs for which they did not generate or derive any benefit.

22 11. With the exception of the now expired PGR agreement, AEPCO has, and  
23 continues to allocate fuel and purchased power costs completely attributable to the  
24

25 <sup>2</sup> These Dockets were consolidated by procedural order dated September 15, 2004.

26 <sup>3</sup> Rate Decision at Finding of Fact 37 at page 10.

1 ARM class to the PRM class, thereby creating an inherent subsidy of the ARM class by  
2 the PRM class.

3 12. Upon information and belief, AEPCO's unilateral decision to allocate  
4 ARM costs to the PRM class will result in SSVEC and its ratepayers paying millions of  
5 extra dollars in fuel and purchased power costs for which they bear no responsibility  
6 nor derive any benefit as a PRM.

7 13. AEPCO's decision to allocate costs in this manner creates an inherent  
8 subsidy of the ARM class by the PRM class that is prohibited by the Rate Decision.

9 14. SSVEC has raised this issue with AEPCO on numerous occasions over  
10 the course of the last several years in anticipation of it becoming a PRM, but the issue  
11 remains unresolved. AEPCO is unwilling to correct the issue prior to filing its next rate  
12 case in 2009, which will not be decided by the Commission until sometime in 2010, at  
13 the earliest.

14 15. In approving the FPPCA, the Commission stated in its Rate Decision that:

15 . . . However, we are concerned with the possibility that AEPCO's  
16 recovery of fuel and purchased power costs under Staff's proposed  
17 FPPCA may nonetheless be outpaced by the rate of future fuel and  
18 purchased power costs increases. Therefore, we will approve the  
19 FPPCA on the terms agreed to by the parties, but in so doing, we will  
20 attach an additional condition allowing AEPCO to request the  
Commission to review the efficacy of the FPPCA when AEPCO submits  
any semi-annual report as required elsewhere in this Decision.<sup>4</sup>

21 16. On February 29, 2008, AEPCO filed a Request for Review of FPPCA  
22 Efficacy and Implementation of Alternative Adjustor Rates ("Efficacy Filing") in the  
23 2004 rate case dockets consistent with the above provision.

24 17. On March 28, 2008, SSVEC filed a Response ("Initial Response") to  
25 AEPCO's Efficacy Filing. In its Initial Response, SSVEC requested that as part of its

26 <sup>4</sup> Rate Decision, Finding of Fact 36 at pages 9 and 10.

1 order granting the AEPCO Efficacy Filing, the Commission require AEPCO (as part of  
2 its next semi-annual filing) to revise and true-up its methodology to fairly allocate the  
3 fuel and purchased power costs to the members of the class of PRMs and the members  
4 of the class of ARMs consistent with actual fuel and purchased power expenses  
5 attributable to the members, thereby eliminating cross-subsidies that currently exist as a  
6 result of the improper allocation methodology that AEPCO uses.

7 18. On April 4, 2008, AEPCO filed a Reply ("AEPCO Reply") to SSVEC's  
8 Initial Response. The AEPCO Reply stated (in part) that: i) it opposed SSVEC's  
9 request to implement a different methodology that assigned cost responsibility among  
10 its members prior to the next rate case; ii) AEPCO was unable to track fuel and  
11 purchased power costs to properly allocate such costs among its members; and iii)  
12 SSVEC's arguments constituted a collateral attack upon the Rate Decision.

13 19. On April 8, 2008, SSVEC filed a response ("Second Response") to the  
14 AEPCO Reply. In its Second Response, SSVEC stated (in part) that it is not necessary  
15 or appropriate for SSVEC and its ratepayers to wait two or three years until the  
16 conclusion of the next rate case before AEPCO allocates costs between its members  
17 consistent with actual fuel and purchased power expenses attributable to the respective  
18 members and classes, and that such change in allocation was contemplated by the Rate  
19 Decision when the Commission established the FPPCA. Contrary to AEPCO's  
20 assertions, SSVEC stated that: i) AEPCO had the ability to track and allocate fuel costs  
21 so as to eliminate the unauthorized cross-subsidies as requested by SSVEC; and ii)  
22 SSVEC's requested relief did not constitute a collateral attack on the Rate Decision  
23 because SSVEC was not challenging any part of the Rate Decision, but rather  
24 AEPCO's improper implementation of the Rate Decision.

25 ...

26 ...

1           20.    On April 15, 2008, AEPCO replied to SSVEC's Second Response.

2           21.    On April 22, 2008, the Commission's Utilities Division ("Staff") filed its  
3 Staff Report and Proposed Order recommending approval of the AEPCO Efficacy  
4 Filing.

5           22.    On April 30, 2008, SSVEC filed Comments Regarding the Proposed  
6 Order ("Comments") that reiterated the concerns that SSVEC raised in the Initial and  
7 Second Responses regarding the allocation methodology that AEPCO was applying  
8 under the Rate Decision in assigning ARM costs to the PRM class. SSVEC proposed  
9 amendments to the Proposed Order consistent with its Comments.

10          23.    At the Commission's May 6, 2008 Open Meeting, there was discussion  
11 between the Commissioners, the Commission's Legal Division, and respective counsel  
12 for AEPCO and SSVEC (as well as others) regarding the issues raised in SSVEC's  
13 Comments.

14          24.    At the Open Meeting, SSVEC reiterated its position that it was  
15 challenging AEPCO's *application* of the Rate Decision and not the rates set forth in the  
16 Rate Decision.

17          25.    The Commission's Legal Division advised the Commission that if  
18 SSVEC was arguing that AEPCO was not *applying* the Rate Decision appropriately,  
19 SSVEC could bring a complaint against AEPCO seeking relief and that resulting  
20 changes from the adjudication of a complaint proceeding would not constitute  
21 retroactive ratemaking.

22          26.    The Commission did not adopt SSVEC's proposed amendments, nor did  
23 it grant the relief that SSVEC had requested in its Comments. The Proposed Order in  
24 the Efficacy Filing was adopted, resulting in the issuance of Commission Decision No.  
25 70354 on May 16, 2008.

26          ...

**JURISDICTION**

27. The Commission has jurisdiction over this Complaint pursuant to Article 15 of the Arizona Constitution; A.R.S. §§ 40-203, 40-246, 40-247, 40-248, 40-249; A.A.C. R14-3-106.L; and the Rate Decision.

**CLAIMS AND REQUESTED RELIEF**

28. SSVEC hereby incorporates Paragraphs 1-27 as if fully set forth herein.

29. AEPCO's actions described herein violate the inherent spirit and intent of the Commission's Rate Decision and, therefore, constitutes non-compliance with the Rate Decision.

30. AEPCO has and continues to improperly allocate fuel and purchased power costs to SSVEC through the FPPCA to the financial detriment of SSVEC and its ratepayers.

WHEREFORE, SSVEC requests that the Commission order the following relief:

A. Finding that AEPCO has violated the Rate Decision by not properly tracking and allocating fuel and purchased power costs to the PRM and ARM classes pursuant to the FPPCA, thereby creating a cross-subsidy from the PRM to the ARM class.

B. Finding that AEPCO has overcharged SSVEC through the FPPCA as a result of its improper allocation of fuel and purchased power costs since April 1, 2008.

C. Finding that SSVEC is entitled to reparations for the amounts that AEPCO has overcharged SSVEC pursuant to A.R.S. §40-248.

D. Ordering AEPCO to properly track and allocate fuel and purchased power costs to the PRM and ARM classes as required by the Rate Decision.

E. Ordering AEPCO to file with the Commission a fully detailed methodology that fairly and accurately allocates fuel and purchased power costs

1 between the individual members of the PRMs and individual members of the ARMs,  
2 consistent with actual fuel and purchased power expenses attributable to the respective  
3 members and classes.

4 F. Ordering AEPCO to make reparations to SSVEC by filing with the  
5 Commission true-up calculations adjusting the fuel bank account consistent with the  
6 Rate Decision, as if the above-ordered allocation had been in effect on April 1, 2008.

7 G. Providing such other relief as the Commission deems just and reasonable.

8 RESPECTFULLY submitted this 15th day of July, 2008.

9 SNELL & WILMER

10  
11 By: 

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17 Attorneys for Sulphur Springs Valley  
18 Electric Cooperative, Inc.

19 ORIGINAL and thirteen (13) copies of the  
20 foregoing Complaint filed with Docket  
21 Control this 15th day of July, 2008.

22 COPY of the foregoing Complaint hand  
23 delivered this 15th day of July, 2008 to:

24 Mike Gleason, Chairman  
25 William A. Mundell, Commissioner  
26 Jeff Hatch-Miller, Commissioner  
Kristin K. Mayes, Commissioner  
Gary Pierce, Commissioner  
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1 Lyn A. Farmer, Chief Hearing Officer  
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15 COPY of the foregoing Complaint sent via  
16 U.S. mail and E-mail this 15th day of July, 2008 to:

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